

## Compton, Mark

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**From:** Brennan, Ross  
**Sent:** Wednesday, September 12, 2018 9:11 AM  
**To:** Bauer, Candice; Kuefler, Patrick; Bahr, Ryan; Thompson, Robert L.; VanTil, Barbara; Bahk, Benjamin  
**Cc:** Socha, Julianne; Compton, Mark; Pierard, Kevin; Utting, George; Bathersfield, Nizanna; Weiss, Kevin; Gutierrez, Sally  
**Subject:** RE: Wisconsin WPDES Legal Authority Requirements Matrix and WPDES CAFO Rule Review Crosswalk Matrix.

**Categories:** No Record

Hi, Candice –

Just sharing your note with the WPD folks who've been initially "tagged" to discuss this. (Folks, attachments are the same ones you've already seen.)

Also, for the folks on Candice's CC list, here's a copy of the note I wrote Kevin Pierard yesterday when he first shared this –

Hi Kevin,

Thanks for passing along the info. We'll caucus here to see whom to involve. This is a bit different from Ohio in that it looks like the immediate ask is to identify necessary statutory changes for the state legislature to consider. The crosswalks will assist considerably. This will still not be a speedy process – doing the careful review will require involvement of WPD, OECA, and OGC. One note is that not transferring the stormwater program would not necessarily make the review process less complex – we would have concerns (under the partial program requirements of the CWA) about the ag department not necessarily covering all NPDES discharges over which it has jurisdiction.

Back to you shortly.

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Acting Chief, Rural Branch  
EPA Office of Wastewater Management  
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**From:** Bauer, Candice  
**Sent:** Tuesday, September 11, 2018 5:17 PM  
**To:** Kuefler, Patrick <kuefler.patrick@epa.gov>; Bahr, Ryan <bahr.ryan@epa.gov>; Thompson, Robert L. <thompson.robertl@epa.gov>; VanTil, Barbara <vantil.barbara@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>  
**Cc:** Socha, Julianne <socha.julianne@epa.gov>; Compton, Mark <compton.mark@epa.gov>; Pierard, Kevin <pierard.kevin@epa.gov>; Brennan, Ross <Brennan.Ross@epa.gov>  
**Subject:** FW: Wisconsin WPDES Legal Authority Requirements Matrix and WPDES CAFO Rule Review Crosswalk Matrix.

For those of you who haven't heard the news that Wisconsin is working to move ahead with a transfer of the CAFO program to DATCP (their Department of Ag), here is the beginning of an analysis of the Wisconsin CAFO program as compared to the federal requirements. Region 5 (Mark Compton - NPDES, Rob Thompson – Regional Counsel's office,

and others) is working to begin our review of these materials in prep for an October meeting with WDNR and DATCP. We will be in touch as we begin this process as described below but wanted to get you this preliminary information as we get started on our end. If HQ Enforcement folks can get this to the relevant staff in Criminal Enforcement, we would appreciate it.

Please reach out to us with questions and/or concerns.

Candice

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Candice R. Bauer, Ph.D.

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**From:** Pierard, Kevin

**Sent:** Monday, September 10, 2018 11:21 AM

**To:** Brennan, Ross <[Brennan.Ross@epa.gov](mailto:Brennan.Ross@epa.gov)>

**Cc:** Bauer, Candice <[bauer.candice@epa.gov](mailto:bauer.candice@epa.gov)>; Gutierrez, Sally <[Gutierrez.Sally@epa.gov](mailto:Gutierrez.Sally@epa.gov)>

**Subject:** FW: Wisconsin WPDES Legal Authority Requirements Matrix and WPDES CAFO Rule Review Crosswalk Matrix.

Ross – Wisconsin has approached us about transferring their CAFO program from the DNR to their Department of Agriculture, Trade and Consumer Protection (DATCP). We had one preliminary conversation with the two agencies and provided some information for them to consider in getting the transfer process started. In response they have provided a legal authority and CAFO rules crosswalk (attached). Our next meeting with them will be October 17. At that time they would like to get our reaction to the crosswalk info. They want to move on making the necessary statutory changes in January or February of 2019.

We would like to have HQ assignees to work on this with us. It will obviously need to involve OGC and OECA as well. Wisconsin is not proposing to transfer the stormwater program so this eliminates some of the complexity associated with the Ohio transfer, but they are on a very fast track and we will need to provide them with feedback quickly to allow them to meet their timeframes. My hope is that you or your assignee can coordinate on the HQ review. Please let us know when you have assignees available so we can begin the internal discussions on the crosswalks. We are also available if you would like to have a call on this in advance of any assignments. thanks

**From:** "Moss, Philip D - DNR" <[Philip.Moss@wisconsin.gov](mailto:Philip.Moss@wisconsin.gov)>

**Date:** September 5, 2018 at 11:56:09 AM CDT

**To:** "[holst.linda@epa.gov](mailto:holst.linda@epa.gov)" <[holst.linda@epa.gov](mailto:holst.linda@epa.gov)>

**Cc:** "Rasmussen, Russell A - DNR" <[Russell.Rasmussen@wisconsin.gov](mailto:Russell.Rasmussen@wisconsin.gov)>, "Heilman, Cheryl W - DNR"

<[Cheryl.Heilman@wisconsin.gov](mailto:Cheryl.Heilman@wisconsin.gov)>, "Dedinsky, Paul - DATCP" <[Paul.Dedinsky@wisconsin.gov](mailto:Paul.Dedinsky@wisconsin.gov)>

**Subject: Wisconsin WPDES Legal Authority Requirements Matrix and WPDES CAFO Rule Review Crosswalk Matrix.**

Dear Ms. Holst:

Attached are two spreadsheets. One is the WPDES Legal Authority Requirements Matrix, the second is the WPDES CAFO Rule Review Crosswalk Matrix. These two spreadsheets follow the crosswalk format provided to WDNR by Candice Bauer at EPA.

The purpose of these matrices is to document the findings of our investigation into the federal legal authority requirements required by USEPA to delegate to the state the authority to regulate the Wisconsin Pollution Discharge Elimination System ("WPDES"). Specifically, the

investigation focuses on the statutory and regulatory authorities that USEPA requires for regulating large concentrated animal feeding operations (“CAFOs”) under the WPDES and how current statutes and regulations satisfy that requirement.

The investigation was conducted in an effort to determine the potential extent that state statute and rules would require modification in order to authorize DATCP to regulate CAFOs under the WPDES should the legislature decide to provide such authority. This is not a statute or rule making proposal nor is it a precursor to legislative action. Rather this investigation’s sole purpose is to identify the playing-field of authorities that would need to be addressed in order for the agencies to start a discussion with the USEPA on their requirements for implementing such a transfer of authority should it be required by the legislature.

Both matrices include a column which identifies, for each federal requirement, which agency (DNR and/or DATCP) would need to be authorized to implement this requirement under state law. This column is included solely for the purpose of facilitating discussions with the USEPA regarding which requirements must DATCP have authority to implement and how the state might amend statute and rules to provide that authority. Where the federal requirement is implemented in state statute, it appears that the likely approach would be to amend the statute to provide DATCP authority to the extent the statute applies to CAFOs. Where the specific federal requirement is currently implemented by state rule, there may be several ways DATCP authority could be accomplished.

The first sheet in the Legal Authority Matrix has color coding which depicts as follows:

Yellow: This is a section of the federal rules that is not required for state programs under 40 CFR § 123.25 but is included in the LAR files provided by EPA.

Green: These are sections of the federal rules which do not apply to permits for large land-animal CAFOs. There are no detail pages for these sections.

Orange: One section, referring to Great Lakes States, is required by 40 CFR § 123.25 but is not in the LAR provided by EPA.

Also, please note that we have not addressed 40 CFR Parts 3 and 127 regarding electronic reporting requirements in the Legal Authority Matrix. This analysis is pending input from WDNR and DATCP Information Technology Departments.

Thank you

Duncan

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